

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Marshall Johnson
LeRoy Koppendrayer
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Onvoy, Inc.'s Complaint
Against Qwest and Request for Expedited
Hearing

ISSUE DATE: February 11, 2002

DOCKET NO. P-421/C-01-1896

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On December 26, 2001, Onvoy Inc. (Onvoy) filed a complaint against Qwest Corporation (Qwest). Onvoy alleged that Qwest failed to properly bill Onvoy for the costs of cageless and caged collocation and to promptly provision and accurately bill Onvoy with respect to Qwest's provision of Local Interconnection Service (LIS) trunks. Onvoy requested that the Commission conduct an expedited hearing pursuant to Minn. Stat. §237.462, subd. 6 to resolve its claims amounting to \$931,674.19 from Qwest.

Qwest filed an answer on January 11, 2002 and included a counterclaim alleging Onvoy owes Qwest for unpaid charges related to Onvoy's collocation and LIS trunk orders.

Onvoy filed an Errata and corrected pages on January 15, 2002. The changes pertain mostly to arithmetic calculations and included a new Exhibit D-1.

On January 16, 2002, the Commission noted that the filing was deficient because it did not adhere to Rules of Practice and Procedure regarding designation of public copies and improper designation of protected data.

On January 22, 2002, the Commission met to consider this matter. After hearing from the parties, the Commission decided to allow the parties two weeks to further discuss the matter among themselves in an effort to reach resolution.

The matter came back before the Commission on February 7, 2002.

FINDINGS AND CONCLUSIONS

I. JURISDICTION AND REFERRAL FOR CONTESTED CASE PROCEEDINGS

The Commission has jurisdiction over Onvoy's complaint pursuant to Minn. Stat. § 237.081. Applying the terms of this statute, the complaint in question has been brought by a provider of telephone service (Onvoy) against a telephone company (Qwest), alleging that several of Qwest's rates, charges, practices, acts, or omissions affecting the delivery or furnishing of telephone service are unreasonable and that Qwest's service, as to Onvoy, is inadequate.

Pursuant to Minn. Stat. § 237.081, Subd. 2, if the Commission is unable to resolve all significant issues to its satisfaction, the Commission is to refer the matter to the Office of Administrative Hearings for contested case proceedings.

The Commission finds that it cannot satisfactorily resolve all questions regarding Qwest's challenged actions and the reasonableness of the rates it proposes to charge Onvoy for certain services on the basis of the record to-date. The Commission will therefore refer Onvoy's complaint to the Office of Administrative Hearings (OAH) for contested case proceedings to develop an ordered record and recommendations.

II. ISSUES TO BE ADDRESSED

In the proceeding before the Administrative Law Judge (ALJ) designated to hear this matter by the OAH, the parties shall address all the issues raised by Onvoy in its complaint that Onvoy does not deem resolved through negotiations between the parties to-date.

The parties shall present their differing views on what services relevant to Onvoy's complaint (including recurring and non-recurring charges for caged and cageless collocation) have been priced by the Commission in its March 15, 2000 Generic Cost Docket Order¹ in and which have not. The parties shall also propose prices for any of these items that are not covered by an existing Commission Order. In addition, the parties will address Onvoy's claims related to the application of Qwest's Direct Measures of Quality [DMOQs] to the late provisioning of LIS trunks

¹ See *In the Matter of the Commission's Generic Investigation of US WEST Communications, Inc.'s Cost of Providing Interconnection and Unbundled Network Elements*, ORDER GRANTING RECONSIDERATION, SETTING PRICES, AND ORDERING COMPLIANCE FILING, Docket No. P-422, 5321, 3167, 466, 421/C-96-154 (March 15, 2000).

The ALJ shall make findings and recommendations with respect to these issues, including

- 1) which services have been *explicitly* priced in an existing Commission Order and which have not;
- 2) which services, if any, have been *implicitly* set by previous Commission Order, i.e. by compelling logical application of established Commission policy or pricing approach to similar services;
- 3) for any services that the ALJ determines is not explicitly covered by an existing Commission Order, what prices should the Commission establish. In recommending prices for any service not explicitly priced by previous Commission Order, the ALJ should follow the policy or cost-study approach that the Commission used in pricing similar services;
- 4) any application of DMOQs in the provisioning of the LIS trunks.

III. PROCEDURAL OUTLINE

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Kathleen D. Sheehy. Her address and telephone number are as follows: 5726 Bryant Avenue South, Minneapolis, MN 55419; (612) 866-4086.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Lillian Brion, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 297-7864; or Karen Hammel, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 297-1852.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are the Companies and the Minnesota Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held in this case on Wednesday, February 13, 2002 at 1:30 p.m. in the Small Hearing Room, Public Utilities Commission, 121-7th Place East, Suite 350, St. Paul, Minnesota 55101. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

The Commission views this matter as urgent. The complainant has alleged severe financial prejudice resulting from Qwest's alleged actions. Based on the significant difference between the prices Qwest believes it is entitled to charge Onvoy for the services in question and the prices at which Onvoy believes it is entitled to purchase these services, allowing a lengthy period of uncertainty regarding the prices Onvoy will be required to pay for these services is likely to cause Onvoy considerable financial instability. As a result, Onvoy's claims of financial prejudice from these unsettled circumstances appear well-founded.

The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of these time constraints and requests that the Administrative Law Judge submit her final report no later than March 19, 2002.

IV. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., apply to general rate cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

V. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above, requesting a Report and Recommendations by March 19, 2002.
2. A prehearing conference shall be held on Wednesday, February 13, 2002, at 1:30 p.m. in the Small Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of Onvoy, Inc.'s Complaint
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MPUC Docket No. DOCKET NO. P-421/C-
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OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Kathleen D. Sheehy, 5726 Bryant Avenue South, Minneapolis, MN 55419; (612) 866-4086.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____